Civil Writ Petition No.1792/1992

Phool Singh Versus

State of Rajsthan & Others

Date of Order ::: 10/11/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. P.Balwada with)
Mr. Hemant Gajraj) , for petitioner
Mr. H.V.Nandwana Dy.Govt.Adv. , for respondents.

Instant petition has been filed seeking promotion on the post of Physical Education Teacher Gr.II on premises that one Tara Sain, who was appointed as Physical Education Teacher on 10/08/79, is junior to him and accordingly, he is also entitled for promotion to the post in question from the date she was promoted.

After selections were made by District Education Officer, Sikar, petitioner was posted as Physical Education Teacher on temporary basis by District Education Office (Female) in Govt. Girls Sr. School vide order dt.28/12/77 (Ann.1).

Name of one Tara Sain has been shown in a list of the cadre of Sr. Teacher Gr.III (Ann.5) prepared by Dy.DEO Sikar. Petitioner earlier approached this Court by filing Civil Writ Petition No.4638/91 with the prayer that despite the fact that his junior Tara Sain has been promoted as Teacher Gr.II, and without any reasons or justification, his candidature has not been considered. This Court vide order dt. 11/09/91 (Ann.6) at admission stage disposed of writ

petition (supra) with the direction to respondents to consider his grievance raised in representation which may be decided in accordance with law. In terms of aforesaid direction of this Court, petitioner made his representation which was examined by respondents and was decided vide order dt.14/11/91 (Ann.8), wherein it was observed that seniority of Tara Sain has been separately maintained in female educational institution and so far as petitioner is concerned, he cannot have any lis because his seniority has been separately maintained for male educational institution by concerned District Education Officer and therefore he cannot equate with for purposes of promotion to the post of Teacher Gr.II. It was also observed that in terms of Rules, to meet out emergent situation or administrative exigency, for the time being, Male Teachers in female institution can also be posted but that will not confer any right to seek promotion in female institutions under Rules. Respondents have fianlised seniority of male institution vide list dt.29/06/91 (Ann.9) in which petitioner's name finds place at S.No.7.

Counsel for petitioner contends that petitioner has still been posted in female institution and on the basis of his posting, he is entitled for promotion in female institution for the post of Teacher Gr.II under Rajasthan Educational Subordinate Service Rules, 1971 (“Rules”) and denial of promotion is in

violation of Art.14 & 16 of the Constitution of India.

Respondents have filed reply to writ petition and it has been inter-alia submitted that mere posting will not confer right to be considered for promotion since promotions are made in accordance with seniority. Post of physical education Teacher Gr.II is promotional post and appointments are made in accordance with Rules of 1971 for female institution in their separate cadre and mere posting of Male Teacher in female institution does not confer any right of promotion.

Counsel for respondents urged that despite being posted in Female Institution, his seniority is still maintained by District Education Officer (Boys) as is evident from Ann.9, as such he cannot claim any lis with Tara Sain nor can claim any promotion on the basis of equality qua her, who is otherwise also not arrayed as party respondent.

I have considered rival contentions of both the parties and with their assistance perused material on record. It is undisputed that selections are made by District Education Officer Sikar and petitioner was posted in Female Institution on temporary basis vide order dt.28/12/77 but admittedly his seniority was prepared and maintained by District Education Officer (Boys) as is evident from Ann.9. Petitioner has not been able to show that any person junior to him as per his seniority has been promoted over his right of consideration for promotion. Submission claiming lis

with Tarain, in my opinion, is without any substance. When both are belonging to independent educational Male/Female institutions as per their seniority prepared by respective appointing authorities, no lis qua Tara Sain could have been claimed by petitioner. Even further R.20 of Rules, clearly contemplates that in case required number of suitable female candidates are not available, male candidates may be appointed according to their order of merit in girls schools also but they would be adjusted in boys' schools as and when suitable female candidates are available. In this view of matter, no right whatsoever otherwise is conferred while seeking promotion qua Tara Sain.

Consequently, this writ petition fails and is hereby dismissed. No order as to costs.

(Ajay Rastogi), J.

K.Khatri/1792CWP1992.